

# **Regulations 1435, and 1436**

## **Section 100**

Complete Rule Making File

*OAL Approval with Approved Text Regulations 1435, and 1436*

*Index*

1. *Form 400 and Proposed Regulations 1435, and 1436*
2. *Statement of Explanation*
3. *Assembly Bill 1547*

Other Documents Relied upon

- A. *Chief Counsel Memo Dated 05/07/12*
- B. *Draft Minutes, 05/31/12*
- C. *Reporters Transcript, 05/31/12*

RECEIVED

JUL 12 2012

by EXECUTIVE DIRECTOR'S OFFICE  
STATE BOARD OF EQUALIZATION

**State of California  
Office of Administrative Law**

In re:

Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:

Amend sections: 1435, 1436

Repeal sections:

**NOTICE OF APPROVAL OF CHANGES  
WITHOUT REGULATORY EFFECT**

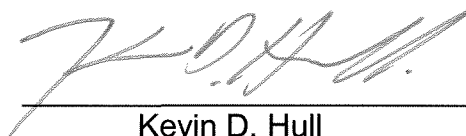
**California Code of Regulations, Title 1,  
Section 100**

**OAL File No. 2012-0613-03 N**

These changes are without regulatory effect to the reference citations. Specifically, the changes update the reference citations to account for the 2009 repeal of Revenue and Taxation Code section 60508.4, permitting a supplier to take a credit on its tax return in lieu of claiming a refund, and the amendment of Revenue and Taxation Code section 60508 which, as amended, now permits a supplier to take a credit in lieu of claiming a refund (Stats.2009, c 545 (A.B. 1547)).

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, Title 1, section 100.

Date: 7/10/2012



Kevin D. Hull  
Attorney

For: DEBRA M. CORNEZ  
Director

Original: Kristine Cazadd  
Copy: Richard Bennion

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JUL 13 2012  
Board Proceedings

**OFFICE OF ADMINISTRATIVE LAW**

300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
(916) 323-6225 FAX (916) 323-6826



**DEBRA M. CORNEZ**  
Director

**MEMORANDUM**

TO: Richard Bennion  
FROM: OAL Front Desk  
DATE: 7/11/2012  
RE: Return of Approved Rulemaking Materials  
OAL File No. 2012-0613-03N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2012-0613-03N regarding Tax Paid Twice on Diesel Fuel/Returned Sales).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30<sup>th</sup> Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

**DO NOT DISCARD OR DESTROY THIS FILE**

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

## NOTICE PUBLICATION/REGULATORY ACTION

## SUBMISSION

See instructions on reverse

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER <b>2012-0613-03N</b>	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

AGENCY WITH RULEMAKING AUTHORITY  
State Board of Equalization

AGENCY FILE NUMBER (if any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Tax Paid Twice on Diesel Fuel/Returned Sales		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
		AMEND	
1435, 1436			
TITLE(S) 18		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
		E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE June 12, 2012
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 10 2012

Office of Administrative Law

**Text of Proposed Changes to**

**Title 18. Public Revenue**

**Regulation 1435. Tax Paid Twice on Diesel Fuel.**

(a) . . . (unchanged).

(b) . . . (unchanged):

(1) . . . (unchanged);

(2) . . . (unchanged);

(3) . . . (unchanged);

(4) . . . (unchanged); and

(5) . . . (unchanged).

(c) . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(A) . . . (unchanged):

1. . . . (unchanged); or

2. . . . (unchanged).

(B) . . . (unchanged):

1. . . . (unchanged); or

2. . . . (unchanged).

(C) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(d) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged).

EXHIBIT A . . . (unchanged).

EXHIBIT B . . . (unchanged).

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60051, 60052, 60501, 60507, 60508~~60508.4~~ and 60521.5, Revenue and Taxation Code.

**Regulation 1436. Returned Sales.**

(a) . . . (unchanged).

(b) . . . (unchanged).

(c) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(d) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60025, 60501 and ~~60508~~60508.4, Revenue and Taxation Code.

File# 2012-0613-03  
BOARD OF EQUALIZATION  
Tax Paid Twice on Diesel Fuel/Returned Sales

These changes are without regulatory effect to the reference citations. Specifically, the changes update the reference citations to account for the 2009 repeal of Revenue and Taxation Code section 60508.4, permitting a supplier to take a credit on its tax return in lieu of claiming a refund, and the amendment of Revenue and Taxation Code section 60508 which, as amended, now permits a supplier to take a credit in lieu of claiming a refund (Stats. 2009, c 545 (A.B. 1547)).

Title 18  
California Code of Regulations  
AMEND: 1435, 1436  
Filed 07/10/2012  
Agency Contact:  
Richard E. Bennion (916) 445-2130

File# 2012-0613-01  
BOARD OF EQUALIZATION  
Feepayer; Rebuttable Presumption/Liability for Fee/Records

This action makes changes without regulatory effect by replacing the two-word phrase "fee payer" with the one-word phrase "feepayer." Use of the one-word phrase "feepayer" makes the regulations consistent with the State Board of Equalization's style manual and is grammatical in nature.

Title 18  
California Code of Regulations  
AMEND: 1205, 1212, 1271  
Filed 07/10/2012  
Agency Contact:  
Richard E. Bennion (916) 445-2130

File# 2012-0613-05  
BOARD OF EQUALIZATION  
Tax-Paid Fuel and Ex-Tax Fuel/Returned Sales/Shipments Out-of-State

This action makes changes without regulatory effect in the authority and reference citations and a grammatical correction. Specifically, the changes update the citations to account for a statutory consolidation that occurred in 2006 (AB 3076), effective January 1, 2007, wherein Revenue and Taxation Code sections 6106.5 and 6106.8 were repealed and subsumed by section 6106. The change also amends the regulation text of section 1120 to make a grammatical correction replacing "Returns" with "Return".

Title 18  
California Code of Regulations  
AMEND: 1105, 1120, 1132, 1161  
Filed 07/10/2012  
Agency Contact:  
Richard E. Bennion (916) 445-2130

File# 2012-0628-01  
BOARD OF FORESTRY AND FIRE PROTECTION  
State Responsibility Fee, 2012 Emergency Regulation

This rulemaking action readopts, for an additional 90 days from the date of expiration of the original emergency regulations, the Board of Forestry and Fire Protection's emergency regulations concerning fire prevention fees on habitable structures in State Responsibility Areas.

Title 14  
California Code of Regulations  
ADOPT: 1665.1, 1665.2, 1665.3, 1665.4, 1665.5, 1665.6, 1665.7, 1665.8  
Filed 07/09/2012  
Effective 07/24/2012  
Agency Contact: George Gentry (916) 653-8031

File# 2012-0611-01  
BUREAU OF AUTOMOTIVE REPAIR  
AB 2289 Penalties

The Director of Consumer Affairs is adopting regulations on behalf of the Bureau of Automotive Repair concerning the penalty schedule for specific violations by licensees. The adoption of these regulatory provisions provides for an Administrative Fine Schedule and minimum/maximum fine amounts for each identified violation. The adoption also provides that the director can order an extension of time within which an order of abatement can be completed.

Title 16  
California Code of Regulations  
ADOPT: 3394.25, 3394.26, 3394.27  
Filed 07/10/2012  
Effective 07/10/2012  
Agency Contact: Steven Hall (916) 255-2135

File# 2012-0625-02  
DEPARTMENT OF WATER RESOURCES  
Implementation of Water Code Section 12585.7

The Department of Water Resources (DWR) amended seven title 23 sections that pertain to state cost-share funding of local flood management plans. The amendments make the state cost-share funding regulations consistent with changes in the Water Code as a result of AB 1788 (Stats. 2010, ch. 579). Existing law provides for state cooperation with the federal government in the construction of specified flood control



# **Regulations 1435, and 1436**

## **Section 100**

### Index

1. *Form 400 and Proposed Regulations 1435, and 1436*
2. *Statement of Explanation*
3. *Assembly Bill 1547*

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER <b>2012-0613-03N</b>	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization			AGENCY FILE NUMBER (if any)

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OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Tax Paid Twice on Diesel Fuel/Returned Sales		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
		AMEND	
1435, 1436			
TITLE(S) 18		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> File & Print <input type="checkbox"/> Print Only			
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Other (Specify) _____			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
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<input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
		E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE June 12, 2012
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

**Text of Proposed Changes to**

**Title 18. Public Revenue**

**Regulation 1435. Tax Paid Twice on Diesel Fuel.**

(a) . . . (unchanged).

(b) . . . (unchanged):

(1) . . . (unchanged);

(2) . . . (unchanged);

(3) . . . (unchanged);

(4) . . . (unchanged); and

(5) . . . (unchanged).

(c) . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(A) . . . (unchanged):

1. . . . (unchanged); or

2. . . . (unchanged).

(B) . . . (unchanged):

1. . . . (unchanged); or

2. . . . (unchanged).

(C) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).

(d) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged).

EXHIBIT A . . . (unchanged).

EXHIBIT B . . . (unchanged).

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60051, 60052, 60501, 60507, 60508~~60508.4~~ and 60521.5, Revenue and Taxation Code.

**Regulation 1436. Returned Sales.**

(a) . . . (unchanged).

(b) . . . (unchanged).

(c) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(d) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60025, 60501 and 60508~~60508~~.4, Revenue and Taxation Code.

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenues

Regulation 1435, *Tax Paid Twice on Diesel Fuel*

Regulation 1436, *Returned Sales*

#### **A. Factual Basis**

Chapter 3 (commencing with section 1411) of division 2 of title 18 of the California Code of Regulations (chapter 3) contains regulations that implement, interpret, or make specific the provisions of the Diesel Fuel Tax Law (Law) (part 31 (commencing with section 60001) of division 2 of the Revenue and Taxation Code), which generally imposes an excise tax on diesel fuel sold in this state. Section 60601 of the Diesel Fuel Tax Law requires the State Board of Equalization (BOE) to enforce the excise tax and authorizes the BOE to prescribe, adopt, and enforce regulations relating to its administration and enforcement. The BOE hereby proposes to change the Diesel Fuel Tax regulations listed above under California Code of Regulations, title 1, section (Rule) 100 to correct outdated citations in their reference notes.

Section 60501 of the Law allows a supplier, as defined, to claim a refund of the tax paid on diesel fuel under specific circumstances. For example, and as relevant here, section 60501, subdivision (a)(4)(J), permits a supplier to claim a refund for tax paid on diesel fuel if the fuel was “[r]emoved from an approved terminal at the terminal rack, but only to the extent that the supplier can show that the tax on the same amount of diesel fuel has been paid more than one time by the same supplier.”

Section 60508 of the Law was amended, effective January 1, 2010 (Stats. 2009, ch. 545 (Assem. Bill No. (AB) 1547)), to permit a supplier to take a credit in lieu of a refund of tax paid on diesel fuel that is exported, removed, sold, or used by the supplier in a manner that would entitle the supplier to a refund under article 1 (commencing with section 60501) of chapter 8 of the Law, including, but not limited to, section 60501, subdivision (a)(4)(J). At the same time, section 60508.4 of the Law, which permitted a supplier to take a credit in lieu of a refund under the circumstances set forth in section 60501, subdivision (a)(4)(J), was repealed by AB 1547, effective January 1, 2010.

Regulation 1435, *Tax Paid Twice on Diesel Fuel*, and Regulation 1436, *Returned Sales*, of chapter 3 were both adopted on March 27, 2002, to, among other things, implement, interpret, and make specific the provisions of section 60508.4 of the Law, which permitted a supplier to take a credit in lieu of claiming a refund under section 60501, subdivision (a)(4)(J).

Accordingly, the BOE included citations to section 60508.4 in Regulation 1435’s and Regulation 1436’s reference notes. Therefore, the BOE has concluded that, as a result of the amendments made to section 60508 and the repeal of section 60508.4 by AB 1547, it is necessary to replace the citations to section 60508.4 with citations to section 60508 in the reference notes for these two regulations and the BOE proposes to make the changes under Rule 100.

## **B. Proposed Changes**

### **1. Rule 100 Changes to Regulation 1435, *Tax Paid Twice on Diesel Fuel***

A Rule 100 change is proposed to replace “60508.4” with “60508” in the reference note for Regulation 1435 to replace a repealed statutory reference with a more current statutory reference.

### **2. Rule 100 Changes to Regulation 1436, *Returned Sales***

A Rule 100 change is proposed to replace “60508.4” with “60508” in the reference note for Regulation 1436 to replace a repealed statutory reference with a more current statutory reference.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary to replace a repealed statutory reference with a more current statutory reference and account for amendments to the Law made by AB 1547.

## PROPOSED CHANGES

1. Change Regulation 1435 (Tax Paid Twice on Diesel Fuel) to read as follows:

### **Regulation 1435. Tax Paid Twice on Diesel Fuel.**

(a) . . . (unchanged).

(b) . . . (unchanged):

(1) . . . (unchanged);

(2) . . . (unchanged);

(3) . . . (unchanged);

(4) . . . (unchanged); and

(5) . . . (unchanged).

(c) . . . (unchanged).

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(A) . . . (unchanged):

1. . . . (unchanged); or

2. . . . (unchanged).

(B) . . . (unchanged):

1. . . . (unchanged); or

2. . . . (unchanged).

(C) . . . (unchanged).

1. . . . (unchanged).

2. . . . (unchanged).

(D) . . . (unchanged).

(E) . . . (unchanged).



(d) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged).

EXHIBIT A . . . (unchanged).

EXHIBIT B . . . (unchanged).

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60051, 60052, 60501, 60507, 60508~~60508~~.4 and 60521.5, Revenue and Taxation Code.

2. Change Regulation 1436 (Returned Sales) to read as follows:

**Regulation 1436. Returned Sales.**

(a) . . . (unchanged).

(b) . . . (unchanged).

(c) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(d) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60025, 60501 and 60508~~60508.4~~, Revenue and Taxation Code.

## **Assembly Bill No. 1547**

### **CHAPTER 545**

An act to amend Sections 6069, 6248, 7339, 60003, 60501, and 60508 of, to add Sections 7339.1, 55041.1, and 60003.1 to, and to repeal Sections 60508.1, 60508.2, 60508.4, and 60509 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 11, 2009. Filed with  
Secretary of State October 11, 2009.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1547, Committee on Revenue and Taxation. State Board of Equalization: taxes and fees.

(1) The Sales and Use Tax Law requires a seller whose permit has been previously suspended or revoked to pay the State Board of Equalization a fee of \$50 for the renewal or issuance of a permit.

This bill would increase that fee to \$100.

(2) The Sales and Use Tax Law imposes a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. Under existing law, there is a presumption that a vehicle, vessel, or aircraft bought outside of this state that is brought into this state within 12 months from the date of its purchase, was purchased from a retailer for storage, use, or other consumption in this state, under specified circumstances, including the circumstance where the vehicle, vessel, or aircraft was purchased by a California resident. Existing law provides an exception if an aircraft or vessel is brought into this state for the purpose of repair, retrofit, or modification.

This bill would provide that a closely held corporation or a limited liability company is considered a California resident for purposes of this law if 50% or more of the shares or membership interests are held by shareholders or members who are California residents. This bill would also provide that an aircraft or vessel must be brought into this state exclusively for repair, retrofit, or modification, and in the case of a vessel, that work must be performed by a licensed repair facility, as specified, and in the case of an aircraft, that work must be performed by a certified repair station or a manufacturer's maintenance facility, as specified, for the exception to apply.

(3) The Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law define the term "terminal" for purposes of those laws.

This bill would expand the definition of "terminal" to include a fuel production facility, as provided, and would define "fuel production facility" for purposes of those laws.

(4) The Diesel Fuel Tax Law imposes a tax upon the removal, entry, sale, delivery, or specified use of diesel fuel, at the rate of \$0.18 per gallon, and provides for a refund of the amount of that tax for, among other things, diesel fuel sold to any consulate officer or consulate employee under specified circumstances, and fuel sold for use by the United States and its agencies and instrumentalities. That law allows a supplier to file a claim for refund to be reimbursed and repaid the amount of the tax paid on diesel fuel as if the supplier sold the fuel directly to the consulate officer or consulate employee under specified circumstances and further allows a supplier to take a credit on its return in lieu of a refund. That law also allows a person to file a claim for refund to be reimbursed and repaid the amount of tax paid on diesel fuel as if the person sold the fuel directly to the United States and its agencies and instrumentalities under specified circumstances.

This bill would allow a supplier to file a claim for refund, or take a credit on its return in lieu of a refund, even if the supplier did not make the direct sale of diesel fuel to the consulate officer or consulate employee, or to the United States and its agencies and instrumentalities, as provided. This bill would also make other changes to conform the Diesel Fuel Tax Law with the Motor Vehicle Fuel Tax Law.

(5) The Fee Collection Procedures Law provides for the administration and collection of various fee programs by the State Board of Equalization.

This bill would allow the board to require the payment of amount due and the filing of the returns for periods other than the period or periods set forth in the tax and fee laws administered under the Fee Collection Procedures Law.

*The people of the State of California do enact as follows:*

SECTION 1. Section 6069 of the Revenue and Taxation Code is amended to read:

6069. A seller whose permit has been previously suspended or revoked shall pay the board a fee of one hundred dollars (\$100) for the renewal or issuance of a permit.

SEC. 2. Section 6248 of the Revenue and Taxation Code is amended to read:

6248. (a) There shall be a rebuttable presumption that any vehicle, vessel, or aircraft bought outside of this state on or after the effective date of this section, and which is brought into California within 12 months from the date of its purchase, was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occurs:

(1) The vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code. For purposes of this section, a closely held corporation or limited liability corporation shall also be considered a California resident if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in Section 516 of the Vehicle Code.

(2) In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

(3) In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

(4) If purchased by a nonresident of California, the vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(b) This presumption may be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. This evidence may include, but is not limited to, evidence of registration of that vehicle, vessel, or aircraft, with the proper authority, outside of this state.

(c) This section shall not apply to any vehicle, vessel, or aircraft used in interstate or foreign commerce pursuant to regulations prescribed by the board.

(d) The amendments made to this section by the act adding this subdivision shall not apply to any vehicle, vessel, or aircraft that is either purchased, or is the subject of a binding purchase contract that is entered into, on or before the operative date of this subdivision.

(e) Notwithstanding subdivision (a), any aircraft or vessel brought into this state exclusively for the purpose of repair, retrofit, or modification shall not be deemed to be acquired for storage, use, or other consumption in this state if the repair, retrofit, or modification is, in the case of a vessel, performed by a repair facility that holds an appropriate permit issued by the board and is licensed to do business by the county in which it is located, or, in the case of an aircraft, performed by a repair station certified by the Federal Aviation Administration or a manufacturer's maintenance facility.

(f) The presumption set forth in subdivision (a) may be controverted by documentary evidence that the vehicle was brought into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside the state. The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty or repair facility and a statement by the owner of the vehicle specifying dates of travel to and from the warranty or repair facility.

SEC. 3. Section 7339 of the Revenue and Taxation Code is amended to read:

7339. "Terminal" means a motor vehicle fuel storage and distribution facility that is supplied by pipeline or vessel, and from which motor vehicle fuel may be removed at a rack. "Terminal" includes a fuel production facility where motor vehicle fuel is produced and stored and from which motor vehicle fuel may be removed at a rack.

SEC. 4. Section 7339.1 is added to the Revenue and Taxation Code, to read:

7339.1. “Fuel production facility” means a facility, other than a refinery, in which motor vehicle fuel is produced.

SEC. 5. Section 55041.1 is added to the Revenue and Taxation Code, to read:

55041.1. The board may require the payment of the amount due and the filing of returns for periods other than the period or periods set forth in the tax and fee laws administered under this part.

SEC. 6. Section 60003 of the Revenue and Taxation Code is amended to read:

60003. “Terminal” means a diesel fuel storage and distribution facility that is supplied by pipeline or vessel, and from which diesel fuel may be removed at a rack. “Terminal” includes a fuel production facility where diesel fuel is produced and stored and from which diesel fuel may be removed at a rack.

SEC. 7. Section 60003.1 is added to the Revenue and Taxation Code, to read:

60003.1. “Fuel production facility” means a facility, other than a refinery, in which diesel fuel is produced.

SEC. 8. Section 60501 of the Revenue and Taxation Code is amended to read:

60501. Persons who have paid a tax for diesel fuel lost, sold, or removed as provided in paragraph (4) of subdivision (a), or used in a nontaxable use, other than on a farm for farming purposes or in an exempt bus operation, shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax.

(a) A claim for refund with respect to diesel fuel is allowed under this section only if all of the following apply:

(1) Tax was imposed on the diesel fuel to which the claim relates.

(2) The claimant bought or produced the diesel fuel and did not sell or resell it in this state except as provided in paragraph (4).

(3) The claimant has filed a timely claim for refund that contains the information required under subdivision (b) and the claim is supported by the original invoice or original invoice facsimile retained in an alternative storage media showing the purchase. If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

(4) The diesel fuel was any of the following:

(A) Used for purposes other than operating motor vehicles upon the public highways of the state.

(B) Exported for use outside of this state. Diesel fuel carried from this state in the fuel tank of a motor vehicle is not deemed to be exported from this state unless the diesel fuel becomes subject to tax as an import under the laws of the destination state.

(C) Used in any construction equipment that is exempt from vehicle registration pursuant to the Vehicle Code, while operated within the confines and limits of a construction project.

(D) Used in the operation of a motor vehicle on any highway that is under the jurisdiction of the United States Department of Agriculture and with respect to the use of the highway the claimant pays, or contributes to, the cost of construction or maintenance thereof pursuant to an agreement with, or permission of, the United States Department of Agriculture.

(E) Used in any motor vehicle owned by any county, city and county, city, district, or other political subdivision or public agency when operated by it over any highway constructed and maintained by the United States or any department or agency thereof within a military reservation in this state. If the motor vehicle is operated both over the highway and over a public highway outside the military reservation in a continuous trip the tax shall not be refunded as to that portion of the diesel fuel used to operate the vehicle over the public highway outside the military reservation.

Nothing contained in this section shall be construed as a refund of the tax for the use of diesel fuel in any motor vehicle operated upon a public highway within a military reservation, which highway is constructed or maintained by this state or any political subdivision thereof.

As used in this section, "military reservation" includes any establishment of the United States Government or any agency thereof used by the Armed Forces of the United States for military, air, or naval operations, including research projects.

(F) Sold by a supplier and which was sold to any consulate officer or consulate employee under circumstances which would have entitled the supplier to an exemption under paragraph (6) of subdivision (a) of Section 60100 if the supplier had sold the diesel fuel directly to the consulate officer or consulate employee.

(G) Lost in the ordinary course of handling, transportation, or storage.

(H) (i) Sold by a person to the United States and its agencies and instrumentalities under circumstances that would have entitled that person to an exemption from the payment of diesel fuel tax under Section 60100 had that person been the supplier of this diesel fuel.

(ii) Sold by a supplier and which was sold by credit card to the United States and its agencies and instrumentalities under circumstances which would have entitled the supplier to an exemption under Section 60100 if the supplier had sold the diesel fuel directly to the United States and its agencies and instrumentalities.

(I) Sold by a person to a train operator for use in a diesel-powered train or for other off-highway use under circumstances that would have entitled that person to an exemption from the payment of diesel fuel tax under Section 60100 had that person been the supplier of this diesel fuel.

(J) Removed from an approved terminal at the terminal rack, but only to the extent that the supplier can show that the tax on the same amount of diesel fuel has been paid more than one time by the same supplier.

(b) Each claim for refund under this section shall contain the following information with respect to all of the diesel fuel covered by the claim:

(1) The name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase.

(2) A statement by the claimant that the diesel fuel covered by the claim did not contain visible evidence of dye.

(3) A statement, which may appear on the invoice, original invoice facsimile, or similar document, by the person that sold the diesel fuel to the claimant that the diesel fuel sold did not contain visible evidence of dye.

(4) The total amount of diesel fuel covered by the claim.

(5) The use made of the diesel fuel covered by the claim described by reference to specific categories listed in paragraph (4) of subdivision (a).

(6) If the diesel fuel covered by the claim was exported, a statement that the claimant has the proof of exportation.

(c) Each claim for refund under this section shall be made on a form prescribed by the board and shall be filed for a calendar year. If, at the close of any of the first three quarters of the calendar year, more than seven hundred fifty dollars (\$750) is refundable under this section with respect to diesel fuel used or exported during that quarter or any prior quarter during the calendar year, and for which no other claim has been filed, a claim may be filed for the quarterly period. To facilitate the administration of this section, the board may require the filing of claims for refund for other than yearly periods.

SEC. 9. Section 60508 of the Revenue and Taxation Code is amended to read:

60508. In lieu of the collection and refund of the tax on tax-paid diesel fuel exported, removed, sold, or used by a supplier in a manner that would entitle the supplier to claim a refund under this article, credit may be given the supplier upon the supplier's tax return and the determination of the amount of the supplier's tax shall be in accordance with any rules and regulations the board may prescribe.

SEC. 10. Section 60508.1 of the Revenue and Taxation Code is repealed.

SEC. 11. Section 60508.2 of the Revenue and Taxation Code is repealed.

SEC. 12. Section 60508.4 of the Revenue and Taxation Code is repealed.



SEC. 13. Section 60509 of the Revenue and Taxation Code is repealed.



## Memorandum

**To:** Honorable Jerome E. Horton, Chairman  
Honorable Michelle Steel, Vice Chair  
Honorable Betty T. Yee, First District  
Senator George Runner, Second District  
Honorable John Chiang, State Controller

**Date:** May 7, 2012

**From:** Randy Ferris, Chief Counsel   
David Gau, Deputy Director   
Property and Special Taxes Department

**Subject:** **Board Meeting, May 30-31, 2012**  
**Chief Counsel Matters - Item J - Rulemaking**  
**Proposed Rule 100 Changes to Specified Special Tax and Fee Regulations**

We request your authorization to complete the Rule 100 changes to ten Special Tax and Fee regulations. These changes are proposed to be made to regulations pertaining to: the Diesel Fuel Tax Law; the Integrated Waste Management Fee Law; the Motor Vehicle Fuel Tax Law; and the Underground Storage Tank Maintenance Fee Law.

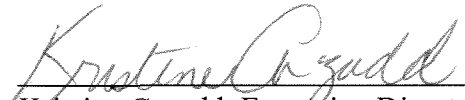
Each of the attached Statements of Explanation includes a detailed description of the proposed changes to each regulation and strikeout and underlined versions of each regulation illustrating the proposed changes. The changes replace repealed statutory references with more current statutory references, replace the two-word terms "fee payer" and "fee payers" with the one-word terms "feepayer" and "feepayers," respectively, and make grammatical changes. The changes are appropriate for processing under Rule 100 without the normal notice and public hearing process because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision.

If you have any questions regarding this request, please let me know or contact Ms. Carolee Johnstone, at (916) 323-3142.


Recommendation by:

  
Randy Ferris, Chief Counsel

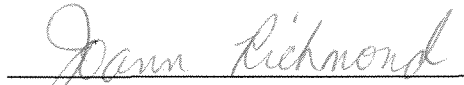
Approved:

  
Kristine Cazadd, Executive Director

Approved:

  
David Gau, Deputy Director  
Property and Special Taxes Department

BOARD APPROVED  
At the 5/31/12 Board Meeting

  
Joann Richmond, Chief  
Board Proceedings Division

Attachments

Statements of Explanation for Changes to Diesel Fuel Tax Regulations 1435, *Tax Paid Twice on Diesel Fuel*, and 1436, *Returned Sales*.

Statement of Explanation for Changes to Integrated Waste Management Fee Regulation 3301, *Records*.

Statements of Explanation for Changes to Motor Vehicle Fuel Tax Regulations 1105, *Tax-Paid Fuel and Ex-Tax Fuel*, 1120, *Returned Sales*, 1132, *Shipments out of the State*, and 1161, *Tax Paid Twice on Motor Vehicle Fuel*.

Statements of Explanation for Changes to Underground Storage Tank Maintenance Fee Regulations 1205, *Fee Payer; Rebuttable Presumption*, 1212, *Liability for Fee*, and 1271, *Records*.

cc (with attachments):

Ms. Joann Richmond	MIC:80
Ms. Christine Bisauta	MIC:82
Mr. Steve Smith	MIC:82
Mr. Bradley Heller	MIC:82
Ms. Carolee Johnstone	MIC:82
Ms. Lynn Bartolo	MIC:57
Mr. Lou Feletto	MIC:31
Mr. Robert Zivkovich	MIC:57

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenues

Regulation 1435, *Tax Paid Twice on Diesel Fuel*  
Regulation 1436, *Returned Sales*

#### **A. Factual Basis**

Chapter 3 (commencing with section 1411) of division 2 of title 18 of the California Code of Regulations (chapter 3) contains regulations that implement, interpret, or make specific the provisions of the Diesel Fuel Tax Law (Law) (part 31 (commencing with section 60001) of division 2 of the Revenue and Taxation Code), which generally imposes an excise tax on diesel fuel sold in this state. Section 60601 of the Diesel Fuel Tax Law requires the State Board of Equalization (BOE) to enforce the excise tax and authorizes the BOE to prescribe, adopt, and enforce regulations relating to its administration and enforcement. The BOE hereby proposes to change the Diesel Fuel Tax regulations listed above under California Code of Regulations, title 1, section (Rule) 100 to correct outdated citations in their reference notes.

Section 60501 of the Law allows a supplier, as defined, to claim a refund of the tax paid on diesel fuel under specific circumstances. For example, and as relevant here, section 60501, subdivision (a)(4)(J), permits a supplier to claim a refund for tax paid on diesel fuel if the fuel was “[r]emoved from an approved terminal at the terminal rack, but only to the extent that the supplier can show that the tax on the same amount of diesel fuel has been paid more than one time by the same supplier.”

Section 60508 of the Law was amended, effective January 1, 2010 (Stats. 2009, ch. 545 (Assem. Bill No. (AB) 1547)), to permit a supplier to take a credit in lieu of a refund of tax paid on diesel fuel that is exported, removed, sold, or used by the supplier in a manner that would entitle the supplier to a refund under article 1 (commencing with section 60501) of chapter 8 of the Law, including, but not limited to, section 60501, subdivision (a)(4)(J). At the same time, section 60508.4 of the Law, which permitted a supplier to take a credit in lieu of a refund under the circumstances set forth in section 60501, subdivision (a)(4)(J), was repealed by AB 1547, effective January 1, 2010.

Regulation 1435, *Tax Paid Twice on Diesel Fuel*, and Regulation 1436, *Returned Sales*, of chapter 3 were both adopted on March 27, 2002, to, among other things, implement, interpret, and make specific the provisions of section 60508.4 of the Law, which permitted a supplier to take a credit in lieu of claiming a refund under section 60501, subdivision (a)(4)(J). Accordingly, the BOE included citations to section 60508.4 in Regulation 1435’s and Regulation 1436’s reference notes. Therefore, the BOE has concluded that, as a result of the amendments made to section 60508 and the repeal of section 60508.4 by AB 1547, it is necessary to replace the citations to section 60508.4 with citations to section 60508 in the reference notes for these two regulations and the BOE proposes to make the changes under Rule 100.

## **B. Proposed Changes**

### **1. Rule 100 Changes to Regulation 1435, *Tax Paid Twice on Diesel Fuel***

A Rule 100 change is proposed to replace “60508.4” with “60508” in the reference note for Regulation 1435 to replace a repealed statutory reference with a more current statutory reference.

### **2. Rule 100 Changes to Regulation 1436, *Returned Sales***

A Rule 100 change is proposed to replace “60508.4” with “60508” in the reference note for Regulation 1436 to replace a repealed statutory reference with a more current statutory reference.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary to replace a repealed statutory reference with a more current statutory reference and account for amendments to the Law made by AB 1547.

## PROPOSED CHANGES

1. Change Regulation 1435 (Tax Paid Twice on Diesel Fuel) to read as follows:

### **Regulation 1435. Tax Paid Twice on Diesel Fuel.**

(a) A supplier who removes diesel fuel from a terminal rack on which a prior tax was paid to the state may either file a claim for refund with the Board or in lieu of a refund take a credit on its tax return.

(b) Conditions to Allow a Credit on a Tax Return.

The credit will be allowed only if:

(1) A tax imposed on the diesel fuel by Revenue and Taxation Code Sections 60051 and 60052 was paid to the state by reporting the gallons on a tax return and was not credited or refunded (the “first tax” or “first taxpayer”);

(2) After imposition of the first tax, another tax was imposed on the diesel fuel by Revenue and Taxation Code Sections 60051 and 60052 and was paid to the state by reporting the gallons on a tax return (the “second tax” or “second taxpayer”);

(3) The person that paid the second tax to the state claims a credit on a tax return filed within three months after the close of the calendar month in which the second tax was reported to the state;

(4) The person that paid the first tax to the State has met the reporting requirements of paragraph (c) of this section; and

(5) A copy of the first taxpayer's report and any copies of statements of subsequent seller must be retained for inspection by the Board with the tax return on which the credit is claimed.

(c) Reporting Requirements.

(1) Reporting by persons paying the first tax.

Except as provided in paragraph (c)(2) of this section, the person that paid the first tax under Revenue and Taxation Code Section 60051 and 60052 (the first taxpayer) must file a report that is in substantially the same form as the model report provided in Exhibit A and contains all information necessary to complete such model report (the first taxpayer's report). A first taxpayer's report must be retained for inspection by the Board with the tax return on which the first tax was paid or reported.

(2) Optional reporting for certain taxable events.

Paragraph (c)(1) does not apply with respect to a tax imposed under Revenue and Taxation Code Section 60051 (removal at a terminal rack), Revenue and Taxation Code Section 60052(b)(2) (nonbulk entries into the state), or Revenue and Taxation Code Section 60052(d) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be

imposed under Revenue and Taxation Code Sections 60051 and 60052 with respect to the fuel, that person should file a first taxpayer's report.

(3) Information provided to subsequent owners, etc.

(A) By Person Required to File First Taxpayer's Report.

A first taxpayer required to file a first taxpayer's report under paragraph (c)(1) of this section must give a copy of the report to:

1. The person to whom the first taxpayer sells the diesel fuel within the bulk transfer/terminal system; or
2. The owner of the diesel fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(B) By Person Filing Optional First Taxpayer's Report.

A first taxpayer filing a first taxpayer's report under paragraph (c)(2) of this section should give a copy of the report to:

1. The person to whom the first taxpayer sells the diesel fuel; or
2. The owner of the diesel fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(C) By Person Receiving First Taxpayer's Report.

1. Bulk Transfer/Terminal System Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the diesel fuel within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer.

2. Rack and Below Rack Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the diesel fuel outside the bulk transfer/terminal system should give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer, if that person expects that another tax will be imposed under Revenue and Taxation Code Sections 60051 and 60052 with respect to the diesel fuel.

(D) Form of Statement.

A statement satisfies the requirements of this paragraph (c)(3)(D) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This statement must contain all information necessary to complete the model statement provided in Exhibit B but need not be in the same format.

(E) Sale to Multiple Buyers.

If the first taxpayer's report relates to diesel fuel divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the diesel fuel is divided and each buyer must be given a copy of the report.

(d) Claim for Refund.

If the supplier fails to take a credit on a tax return filed within three months after the close of the calendar month in which the second tax was imposed, the supplier may only file a claim for refund with the Board to recover the tax.

Each claim for a refund must contain the following information with respect to the fuel covered by the claim:

- (1) The information required in Revenue and Taxation Code Section 60501.
- (2) Volume and type of diesel fuel.
- (3) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).
- (4) Amount of second tax that claimant paid or reported to the state and the tax return on which it was paid or reported.
- (5) A statement that claimant has not separately stated on the sales invoice reimbursement for both the first tax and the second tax or has not included in the sales price of the diesel fuel reimbursement for both the first tax and the second tax. The second taxpayer can only receive reimbursement for one tax from the customer.
- (6) A copy of the first taxpayer's report that relates to the diesel fuel covered by the claim.
- (7) If the diesel fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller that the claimant received with respect to that diesel fuel.

EXHIBIT A . . . [No Change]

EXHIBIT B . . . [No Change]

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60051, 60052, 60501, 60507, ~~60508~~60508.4 and 60521.5, Revenue and Taxation Code.

2. Change Regulation 1436 (Returned Sales) to read as follows:

**Regulation 1436. Returned Sales.**

(a) When diesel fuel included in a supplier's taxable removals, entries or sales is returned to the supplier by the customer to whom it was sold and is delivered into a refinery or an approved terminal's storage tank, the supplier may either file a claim for refund with the Board or in lieu of

the refund take a credit on its tax return. The credit memorandum covering the return of the diesel fuel shall identify the gallonage returned as either volumetric gallons or temperature corrected gallons based upon how the tax was originally invoiced to the customer and shall separately state the diesel fuel tax.

(b) It shall be presumed that the supplier purchased the diesel fuel that was returned as tax-paid diesel fuel if the credit memorandum includes diesel fuel tax. For the purpose of a refund or credit, it also shall be presumed that the subsequent removal of the diesel fuel from a terminal rack by the supplier that received the returned diesel fuel is made in the month that the diesel fuel was returned.

(c) Conditions to Allow a Credit on a Tax Return.

The credit will be allowed only if:

- (1) The returned diesel fuel was delivered into a refinery or an approved terminal storage tank.
- (2) The credit is taken on a tax return filed within three months after the close of the calendar month in which the diesel fuel is returned.
- (3) The supplier prepares a first taxpayer's report (as identified in Regulation 1435) when the diesel fuel is returned.
- (4) A copy of the first taxpayer's report and the credit memorandum must be retained for inspection by the Board with the tax return on which the credit is claimed.
- (d) If the supplier fails to take a credit on a tax return filed within three months after the close of the calendar month in which the diesel fuel was returned, the supplier may only file a claim for refund with the Board to recover the tax. Each claim for a refund must contain the following information with respect to the diesel fuel covered by the claim:

- (1) The information required in Revenue and Taxation Code Section 60501.
- (2) Volume and type of diesel fuel.
- (3) Date on which the claimant received the returned diesel fuel.
- (4) A copy of the first taxpayer's report that relates to the diesel fuel covered by the claim.
- (5) A copy of the credit memorandum that returned the diesel fuel.

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60025, 60501 and ~~60508~~60508.4, Revenue and Taxation Code.



# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenues Regulation 3301, *Records*

#### **A. Factual Basis**

Chapter 8.3 (commencing with section 3301) of division 2 of title 18 of the California Code of Regulations (chapter 8.3) contains regulations that implement, interpret, or make specific the provisions of the Integrated Waste Management Fee Law (Law) (part 23 (commencing with section 45001) of division 2 of the Revenue and Taxation Code), pursuant to which the State Board of Equalization (BOE) administers the solid waste disposal fee imposed under section 48000 of the Public Resources Code. The BOE hereby proposes to change Regulation 3301, *Records*, of chapter 8.3 under California Code of Regulations, title 1, section (Rule) 100 to update the manner in which the BOE refers to persons that are liable for payment of the solid waste disposal fee in the regulation.

The Law was enacted in 1987 (Assem. Bill No. 2448, (Stats. 1987, ch. 1319)). Section 45009 of the Law defines the two-word term “fee payer” to mean “any person who is liable for the fee imposed pursuant to Section 48000 of the Public Resources Code and the two-word term “fee payer” is used throughout the Law. As a result, when the BOE adopted Regulation 3301 on February 5, 2003, the same two-word form of the term, “fee payer,” was used. However, since the adoption of Regulation 3301, the BOE has stopped using the two-word term “fee payer” to refer to a person that is liable for the payment of a BOE-administered fee in its forms and publications, and the BOE has adopted a uniform policy requiring its staff to use the single word “feepayer” in place of the two-word term “fee payer.” (See the direction regarding the word “feepayer” in the BOE Style A-Z section of BOE Publication 384, “A Style Guide for BOE Forms and Publications” (May 2011), Introduction and page 3 from the BOE’s internal website, attached.) Therefore, the BOE now proposes to change Regulation 3301 in order to replace the two-word terms “fee payer” and “fee payers” with the single-word terms “feepayer” and “feepayers,” respectively, under Rule 100, in order to make the use of the terms in the BOE’s regulation consistent with the use of the terms in all of the BOE’s forms and publications.

#### **B. Proposed Changes**

##### Rule 100 Changes to Regulation 3301, *Records*

Rule 100 changes are proposed to replace the term “fee payer” with “feepayer” in the first and second sentences of subdivision (a) and the second sentence of subdivision (b) of Regulation 3301, and to replace the term “fee payers” with “feepayers” in the first sentence of subdivision (b) of Regulation 3301, to update the form of the terms.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary to make the use of the relevant terms in the BOE's regulation consistent with the use of the same terms in all of the BOE's forms and publications.

## PROPOSED CHANGES

Change Regulation 3301 (Records) to read as follows:

### **Regulation 3301. Records.**

(a) General. A ~~feepayer~~~~fee payer~~ shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901. Notwithstanding the record keeping requirements of the Department of Resources Recycling and Recovery set forth at California Code of Regulations, Title 14, Section 17414, for fee collection purpose the ~~feepayer~~~~fee payer~~ shall retain and preserve records for a period of not less than four years except as provided in Section 4901.

(b) Specific Applications. In addition to the record keeping requirements set forth in subdivision (a), ~~feepayers~~~~fee payers~~ shall comply with the following requirements. A ~~feepayer~~~~fee payer~~ shall keep complete records, including but not limited to:

- (1) Weight tickets or other source documents recording amounts of waste entering the landfill.
- (2) Documentation supporting the validity of volumetric conversion factors used as an alternative to actual weight to report waste tonnage.
- (3) Reports to other local and state agencies of waste tonnage disposed.

Note: Authority cited: Section 45851, Revenue and Taxation Code. Reference: Section 45852, Revenue and Taxation Code.

## Introduction

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This house style guide has been developed by the Board of Equalization's (BOE) Editorial Services Section. As style changes over time, publication units, publishers, and newspapers generally decide to use one dictionary and one published style manual (in our case we use *Merriam Webster's Collegiate Dictionary* and *The Gregg Reference Manual*). In addition to the standard references, we have also developed this house style guide.

A team of editors, forms analysts, and Customer Service and Publishing Division managers developed this style guide to promote consistency in BOE forms and publications. This team discussed every item in this guide and agreed on how we should treat each individual entry.

If an example is not listed, please refer to *The Gregg Reference Manual, Eleventh Edition* for usage or *Merriam Webster's Collegiate Dictionary, Eleventh Edition*.

**E**

e.g., etc.	avoid; use for example, among others
enclosed (vs. attached)	to insert in the same envelope (see "attached")
ex tax	don't use; write out "without tax"

**F**

fax	lowercase
faxback	one word
federal	don't capitalize
feepayer	one word
fewer vs. less	use with things that are counted (fewer buckets, less water)
fine-tune	always hyphenated
firsthand	one word
fiscal year	lower case
follow-up (n., adj.)	<i>Example:</i> She was in charge of follow-up.(n) She did the follow-up work.(adj.)
follow up (v.)	<i>Example:</i> Please follow up with her as the deadline approaches.
form	avoid using before form identifier (BOE-770)
full-time	always hyphenated
fundraising	one word, no hyphen
FY (fiscal year)	capitalize when referring to fiscal year

**G**

Governor (the)	capitalize when referring specifically to the Governor of California
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**H**

handicap accessible	avoid; use wheelchair accessible
hard copy (n.)	<i>Example:</i> Please give it to Legal in hard copy.
hard-copy (adj.)	<i>Example:</i> Legal wants it in hard-copy format.
he/she; he or she; him/her; him or her	avoid both; use their or our
headquarters	a singular or plural noun
Headquarters	capitalized when referring to 450 N Street location
homepage	one word
Honorable	capitalized when used before name (the Honorable

Attachment

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenues

Regulation 1105, *Tax-Paid Fuel and Ex-Tax Fuel*  
Regulation 1120, *Returned Sales*  
Regulation 1132, *Shipments out of the State*  
Regulation 1161, *Tax Paid Twice on Motor Vehicle Fuel*

#### **A. Factual Basis**

Chapter 1 (commencing with section 1101) of division 2 of title 18 of the California Code of Regulations (chapter 1) contains regulations that implement, interpret, or make specific the provisions of the Motor Vehicle Fuel Tax Law (Law) (part 2 (commencing with section 7301) of division 2 of the Revenue and Taxation Code), which imposes excise taxes on “motor vehicle fuel,” including gasoline and aviation gasoline, and “aircraft jet fuel.” The State Board of Equalization (BOE) hereby proposes to change the provisions of chapter 1 listed above under California Code of Regulations, title 1, section (Rule) 100 to correct outdated citations in the regulations’ reference notes and to make a minor grammatical change to the text of one regulation, as described in detail below.

Section 8101 of the Law allows a supplier, as defined, to claim a refund of the tax paid on motor vehicle fuel under specific circumstances, including, but not limited to, where the supplier buys and uses the fuel for purposes other than operating motor vehicles upon the public highways of the state, exports the fuel for use outside the state, or delivers the fuel to a terminal and removes the fuel from the terminal, as provided. In addition, prior to January 1, 2007, suppliers were permitted to choose to take a credit, in lieu of a refund, under most of these same circumstances, and there were individual statutes that separately pertained to each situation in which a credit could be claimed in lieu of a refund under section 8101, including sections 8106.5 and 8106.8 of the Law.

Effective January 1, 2007, sections 2, 4, and 5 of Assembly Bill No. 3076 (Stats. 2006, ch. 364) repealed section 8106.5 permitting a supplier to claim a credit in lieu of a refund with respect to exported tax-paid fuel, and section 8106.8 permitting a supplier to claim a credit in lieu of a refund with respect to tax-paid fuel delivered to or removed from a terminal at the rack, and amended section 8106 to consolidate into one statute all of the statutory provisions under which a supplier may claim a credit in lieu of a refund and provide that a supplier may claim a credit in lieu of a refund under all of the circumstances under which a supplier would be entitled to claim a refund under section 8101. As a result, section 8106 now permits the credits in lieu of refunds previously permitted by sections 8106.5 and 8106.8, and section 8106 should replace sections 8106.6 and 8106.8 in the reference notes for the regulations listed above. Therefore, the BOE now proposes to change the Motor Vehicle Fuel Tax regulations listed above, and described in detail below, to replace the citations to sections 8106.5 and 8106.8 with citations to section 8106 in the regulations’ reference notes and to change the word “Returns” to the word “Return” in Regulation 1120 in order to make one nonsubstantive, grammatical correction, under Rule 100.

## **B. Proposed Changes**

### **1. Rule 100 Change to Regulation 1105, *Tax-Paid Fuel and Ex-Tax Fuel***

A Rule 100 change is proposed to replace “8106.8” with “8106” in the reference note for Regulation 1105 to update the reference note by removing the reference to the repealed statute and replacing it with a reference to the statute that is currently applicable.

### **2. Rule 100 Changes to Regulation 1120, *Returned Sales***

A Rule 100 change is proposed to replace “8106.8” with “8106” in the reference note for Regulation 1120 to update the reference note by removing the reference to the repealed statute and replacing it with a reference to the statute that is currently applicable.

A Rule 100 change is also proposed to replace “Returns” with “Return” in the heading to subdivision (c) of Regulation 1120, to correct a grammatical error by making the term singular.

### **3. Rule 100 Change to Regulation 1132, *Shipments out of the State***

A Rule 100 change is proposed to replace “8106.5” with “8106” in the reference note for Regulation 1132 to update the reference note by removing the reference to the repealed statute and replacing it with a reference to the statute that is currently applicable.

### **4. Rule 100 Change to Regulation 1161, *Tax Paid Twice on Motor Vehicle Fuel***

A Rule 100 change is proposed to replace “8106.8” with “8106” in the reference note for Regulation 1161 to update the reference note by removing the reference to the repealed statute and replacing it with a reference to the statute that is currently applicable.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary to update the statutory references and to correct a grammatical error.

## PROPOSED CHANGES

1. Change Regulation 1105 (Tax-Paid Fuel and Ex-Tax Fuel) to read as follows:

### **Regulation 1105. Tax-Paid Fuel and Ex-Tax Fuel.**

(a) "Tax-paid fuel" is the gallonage of motor vehicle fuel acquired with the California motor vehicle fuel tax paid. An acquisition of motor vehicle fuel will be considered tax-paid only if it can be supported by one of the following:

(1) A sales invoice or a contract which clearly states that the motor vehicle fuel tax is included in the invoice or contract and proof that the amount representing motor vehicle fuel tax has been paid, or

(2) A motor vehicle fuel purchase receipt showing that the amount paid for the fuel included the motor vehicle fuel tax, or

(3) Other documentation showing that the motor vehicle fuel tax has been paid to the state.

(b) "Ex-tax fuel" is the gallonage of motor vehicle fuel acquired without the California motor vehicle fuel tax paid.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7345, 7401, 7653, 8101 and ~~8106~~8106.8, Revenue and Taxation Code.

2. Change Regulation 1120 (Returned Sales) to read as follows:

### **Regulation 1120. Returned Sales.**

(a) When motor vehicle fuel included in a supplier's taxable removals, entries or sales is returned to the supplier by the customer to whom it was sold and is delivered into a refinery or an approved terminal's storage tank, the supplier may either file a claim for refund with the State Controller or in lieu of the refund take a credit on its tax return. The credit memorandum covering the return of the motor vehicle fuel shall identify the gallonage returned as either volumetric gallons or temperature corrected gallons based upon how the tax was originally invoiced to the customer and shall separately state the motor vehicle fuel tax.

(b) It shall be presumed that the supplier purchased the motor vehicle fuel that was returned as tax-paid motor vehicle fuel if the credit memorandum includes motor vehicle fuel tax. For purposes of a refund or credit, it also shall be presumed that the subsequent removal of the motor vehicle fuel from a terminal rack by the supplier that received the returned motor vehicle fuel is made in the month that the motor vehicle fuel was returned.

(c) Conditions to Allow a Credit on a Tax ~~Return~~Returns.

The credit will be allowed only if:

(1) The returned motor vehicle fuel was delivered into a refinery or an approved terminal storage tank.



(2) The credit is taken on a tax return filed within three months after the close of the calendar month in which the motor vehicle fuel is returned.

(3) The supplier prepares a first taxpayer's report (as identified in Regulation 1161) when the motor vehicle fuel is returned.

(4) A copy of the first taxpayer's report and the credit memorandum must be retained for inspection by the Board with the tax return on which the credit is claimed.

(d) If the supplier fails to take credit on a tax return filed within three months after the close of the calendar month in which the motor vehicle fuel was returned, the supplier may only file a claim for refund with the State Controller to recover the tax. The claim for refund must be filed with the State Controller within three years from the date of return of the fuel.

Each claim for a refund must contain the following information with respect to the motor vehicle fuel covered by the claim:

(1) The information required in Revenue and Taxation Code Section 8102.

(2) Volume and type of motor vehicle fuel.

(3) Date on which the claimant received the returned motor vehicle fuel.

(4) A copy of the first taxpayer's report that relates to the motor vehicle fuel covered by the claim.

(5) A copy of the credit memorandum that returned the motor vehicle fuel.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7315, 8101, 8102, 8105 and 8106~~8106.8~~, Revenue and Taxation Code.

3. Change Regulation 1132 (Shipments out of the State) to read as follows:

**Regulation 1132. Shipments out of the State.**

(a) Definitions.

(1) Export. An export of motor vehicle fuel is the delivery or shipment of fuel by the supplier from a point in this state to a point outside of this state. The fuel is not exported if it is diverted in transit or for any reason is not actually delivered out of this state, regardless of documentary evidence held by the supplier respecting delivery of the fuel to a carrier for out-of-state shipment or to a vessel clearing for an out-of-state port.

(2) Carrier. A carrier means a person or firm who is regularly engaged in the business of transporting for compensation property owned by other persons and includes both common and contract carriers. The carrier may be hired by either the purchaser or the supplier.

(b) Requirements. A supplier may not claim an export exemption from motor vehicle fuel tax under Revenue and Taxation Code Section 7401(a)(3) unless the motor vehicle fuel is in fact exported and the export is accomplished in the manner specified in either (1) or (2) below:

(1) The supplier claiming the exemption from tax shows that it delivered the motor vehicle fuel to any vessel clearing from a port of this state for a port outside of this state and the fuel was actually exported from this state in the vessel; or

(2) The supplier claiming the exemption from tax shows that it exported the motor vehicle fuel from this state pursuant to a written contract requiring delivery by the supplier of the fuel to:

(A) the out-of-state point by facilities operated by the supplier,

(B) a carrier for shipment to a consignee at the out-of-state point, or

(C) a customs broker or forwarding agent for shipment to a location outside of this state.

(c) Exports of Ex-tax Fuel. The tax does not apply to the export of ex-tax motor vehicle fuel actually exported.

A supplier must claim the exemption for the export of ex-tax fuel on the return filed for the period in which the export was made. If a supplier fails to claim the exemption on the return and tax is erroneously paid on ex-tax export of fuel, a timely claim for refund must be filed with the Board pursuant to Section 8128 of the Motor Vehicle Fuel Tax Law in order to obtain a refund of the amount of taxes so overpaid.

(d) Exports of Tax-paid Fuel. In lieu of claiming a refund of tax for exports of tax-paid fuel with the State Controller as provided by section 8101(b) of the Revenue and Taxation Code, a supplier may take a credit on its return for tax-paid fuel when the fuel is exported to a point outside the state. The credit must be claimed on a return filed within three months after the close of the calendar month in which the tax-paid fuel is exported. If the credit exceeds the taxable gallons of motor vehicle fuel for the period in which the credit may be taken, refund of the tax on the excess gallonage can only be obtained by filing a claim for refund with the State Controller.

Failure to take credit on a return filed within three months after the close of the calendar month in which the tax-paid fuel is exported does not give rise to a right to file a claim for refund with the Board pursuant to section 8126 of the Revenue and Taxation Code. Instead, claims for refund for tax-paid fuel exported must be filed with the State Controller within three years from the date of purchase of the fuel.

(e) Documentation required for support. All shipments of motor vehicle fuel to points outside of the state for which tax exemption is claimed on a tax return shall be reported on a schedule accompanying the return for the period for which the exemption or credit is claimed.

The supplier must retain documentation to support the delivery of the fuel by the supplier at an out-of-state location for all exemptions or credits. Documentation may include, but is not limited to, contracts, bills of lading, delivery tickets, or meter readings. The supplier has the burden of providing the proper substantiation and documentation to support the exemption or credit.

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7338, 7401, 7651, 8101, 8102, 8105, 8106~~8106.5~~, 8126, 8128, 8129, 8301 and 8303, Revenue and Taxation Code.

4. Change Regulation 1161 (Tax Paid Twice on Motor Vehicle Fuel) to read as follows:

**Regulation 1161. Tax Paid Twice on Motor Vehicle Fuel.**

(a) A supplier who removes motor vehicle fuel from a terminal rack on which a prior tax was paid to the state may either file a claim for refund with the State Controller or in lieu of a refund take a credit on its tax return.

(b) Conditions to Allow a Credit on a Tax Return.

The credit will be allowed only if:

(1) A tax imposed on the motor vehicle fuel by Revenue and Taxation Code Sections 7362 and 7363 was paid to the state by reporting the gallons on a tax return and was not credited or refunded (the “first tax” or “first taxpayer”);

(2) After imposition of the first tax, another tax was imposed on the motor vehicle fuel by Revenue and Taxation Code Sections 7362 and 7363 and was paid to the state by reporting the gallons on a tax return (the “second tax” or “second taxpayer”);

(3) The person that paid the second tax to the state claims a credit on a tax return filed within three months after the close of the calendar month in which the second tax was reported to the state;

(4) The person that paid the first tax to the State has met the reporting requirements of paragraph (c) of this section; and

(5) A copy of the first taxpayer's report and any copies of statements of subsequent seller must be retained for inspection by the Board with the tax return on which the credit is claimed.

(c) Reporting Requirements.

(1) Reporting by persons paying the first tax.

Except as provided in paragraph (c)(2) of this section, the person that paid the first tax under Revenue and Taxation Code Section 7362 and 7363 (the first taxpayer) must file a report that is in substantially the same form as the model report provided in Exhibit A and contains all information necessary to complete such model report (the first taxpayer's report). A first taxpayer's report must be retained for inspection by the Board with the tax return on which the first tax was paid or reported.

(2) Optional reporting for certain taxable events.

Paragraph (c)(1) does not apply with respect to a tax imposed under Revenue and Taxation Code Section 7362 (removal at a terminal rack), Revenue and Taxation Code Section 7363(b)(2)

(nonbulk entries into the state), or Revenue and Taxation Code Section 7363(d) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be imposed under Sections 7362 and 7363 with respect to the fuel, that person should file a first taxpayer's report.

(3) Information provided to subsequent owners, etc.

(A) By Person Required to File First Taxpayer's Report.

A first taxpayer required to file a first taxpayer's report under paragraph (c)(1) of this section must give a copy of the report to:

1. The person to whom the first taxpayer sells the motor vehicle fuel within the bulk transfer/terminal system; or
2. The owner of the motor vehicle fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(B) By Person Filing Optional First Taxpayer's Report.

A first taxpayer filing a first taxpayer's report under paragraph (c)(2) of this section should give a copy of the report to:

1. The person to whom the first taxpayer sells the motor vehicle fuel; or
2. The owner of the motor vehicle fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(C) By Person Receiving First Taxpayer's Report.

1. Bulk Transfer/Terminal System Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the motor vehicle fuel within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer.

2. Rack and Below Rack Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the motor vehicle fuel outside the bulk transfer/terminal system should give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer, if that person expects that another tax will be imposed under Revenue and Taxation Code Sections 7362 and 7363 with respect to the motor vehicle fuel.

(D) Form of Statement.

A statement satisfies the requirements of this paragraph (c)(3)(D) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This

statement must contain all information necessary to complete the model statement provided in Exhibit B but need not be in the same format.

(E) Sale to Multiple Buyers.

If the first taxpayer's report relates to motor vehicle fuel divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the motor vehicle fuel is divided and each buyer must be given a copy of the report.

(d) Claim For Refund.

If the supplier fails to take a credit on a tax return filed within three months after the close of the calendar month in which the second tax was imposed, the supplier may only file a claim for refund with the State Controller to recover the tax. The claim for refund must be filed with the State Controller within three years from the date of purchase of the motor vehicle fuel.

Each claim for a refund must contain the following information with respect to the fuel covered by the claim:

- (1) The information required in Revenue and Taxation Code Section 8102.
- (2) Volume and type of motor vehicle fuel.
- (3) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).
- (4) Amount of second tax that claimant paid or reported to the state and the tax return on which it was paid or reported.
- (5) A statement that claimant has not separately stated on the sales invoice reimbursement for both the first tax and the second tax or has not included in the sales price of the motor vehicle fuel reimbursement for both the first tax and the second tax. The second taxpayer can only receive reimbursement for one tax from the customer.
- (6) A copy of the first taxpayer's report that relates to the motor vehicle fuel covered by the claim.
- (7) If the motor vehicle fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller that the claimant received with respect to that motor vehicle fuel.

EXHIBIT A . . . [No Change]

EXHIBIT B . . . [No Change]

Note: Authority cited: Section 8251, Revenue and Taxation Code. Reference: Sections 7362, 7363, 8101, 8102, 8105, 8106~~8106.8~~ and 8127.5, Revenue and Taxation Code.

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenues

Regulation 1205, *Fee Payer; Rebuttable Presumption*

Regulation 1212, *Liability for Fee*

Regulation 1271, *Records*

#### **A. Factual Basis**

Chapter 1.5 (commencing with section 1201) of division 2 of title 18 of the California Code of Regulations (chapter 1.5) contains regulations that implement, interpret, or make specific the provisions of the Underground Storage Tank Maintenance Fee Law (Law) (part 26 (commencing with section 50101) of division 2 of the Revenue and Taxation Code), pursuant to which the State Board of Equalization (BOE) administers the petroleum storage fees imposed under sections 25299.41 and 25299.43 of the Health and Safety Code.<sup>1</sup> The BOE hereby proposes to change the provisions of chapter 1.5 listed above under California Code of Regulations, title 1, section (Rule) 100 to update the manner in which the BOE refers to persons that are liable for payment of the fees imposed under sections 25299.41 and 25299.43 of the Health and Safety Code in the regulations.

The Law was enacted in 1989 (Sen. Bill No. 299 (Stats. 1989, ch. 1442)). Section 50107 of the Law defines the two-word term “fee payer” to mean “any person liable for the payment of a fee imposed by Section 25299.41 of the Health and Safety Code” and the two word term “fee payer” was originally used throughout the Law and in chapter 1.5.

However, amendments made to the Law since 2000 have used the one-word term “feepayer,” rather than the two-word term “fee payer.” (See, e.g., Assem. Bill No. 2894 (Stats. 2000, ch. 923) [adding the one-word term “feepayer” to section 50112 and replacing the two-word term “fee payer” with the one-word term “feepayer” in section 50112.4, subd. (b)].) Furthermore, the BOE has stopped using the two-word term “fee payer” to refer to a person that is liable for the payment of a BOE-administered fee in its forms and publications, and the BOE has adopted a uniform policy requiring its staff to use the one-word term “feepayer” in place of the two-word term “fee payer.” (See the direction regarding the word “feepayer” in the BOE Style A-Z section of BOE Publication 384, “A Style Guide for BOE Forms and Publications” (May 2011), Introduction and page 3 from the BOE’s internal website, attached.)

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<sup>1</sup> The BOE jointly administers the fees imposed under Health and Safety Code sections 25299.41 and 25299.43 under the Law in accordance with section 50108 of the Law and Health and Safety Code section 25299.43, subdivision (g), respectively. Chapter 1.5 was adopted to implement, interpret, and make specific the fees imposed by both sections 25299.41 and 25299.43 and the term “fee payer,” as currently used in chapter 1.5, refers to a person that is liable for the payment of the fees imposed by both sections.

The BOE-adopted regulations listed above use the two-word term “fee payer”. Therefore, the BOE now proposes to change the regulations listed above, and described in detail below, to replace the two-word term “fee payer” with the one-word term “feepayer” under Rule 100, in order to update the manner in which the BOE refers to persons that are liable for payment of the fees imposed under sections 25299.41 and 25299.43 of the Health and Safety Code in the regulations.

## **B. Proposed Changes**

### **1. Rule 100 Change to Regulation 1205, *Fee Payer; Rebuttable Presumption***

A Rule 100 change is proposed to replace the two-word term “Fee Payer” with the one-word term “Feepayer” in the title of Regulation 1205.

### **2. Rule 100 Changes to Regulation 1212, *Liability for Fee***

A Rule 100 change is proposed to replace the two-word term “fee payer” with the one-word term “feepayer” in the second sentence of subdivision (d) of Regulation 1212.

### **3. Rule 100 Change to Regulation 1271, *Records***

A Rule 100 change is proposed to replace the two-word term “fee payer” with the one-word term “feepayer” in subdivision (a) of Regulation 1271.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary in order to update the manner in which the BOE refers to persons that are liable for payment of the fees imposed under sections 25299.41 and 25299.43 of the Health and Safety Code in the regulations.

## PROPOSED CHANGES

1. Change Regulation 1205 (Fee Payer; Rebuttable Presumption) to read as follows:

### **Regulation 1205. ~~Feepayer~~Fee Payer; Rebuttable Presumption.**

The fee is due from the owner of an underground storage tank for which a permit is required pursuant to Section 25284 of the Health and Safety Code. There is a rebuttable presumption that the owner of the real property is the owner of the underground storage tank located on the property, even if the property is leased to another person. This presumption may be overcome by showing that ownership of the tank rests with someone other than the real property owner. Evidence to rebut the presumption may include, but is not limited to, the following:

- (a) The lessee installed the underground storage tank at the location, and the lease agreement gives the lessee the right to remove the tank at the termination of the lease, regardless of whether the lessor's approval of the removal is required.
- (b) The lessee installed the underground storage tank at the location, and the lease agreement states that any improvements installed by the lessee are the property of the lessee during the term of the lease.
- (c) Documentation, such as a bill of sale, shows the transfer of ownership of the tank to a person other than the real property owner.
- (d) The underground storage tank is depreciated on the state or federal income tax returns of a person other than the real property owner.
- (e) The underground storage tank existed at the premises at the time the lease agreement was signed, and the lease agreement specifies that the underground storage tank is owned by and title thereto is vested in the lessee during the term of the lease.

Note: Authority cited: Section 50152, Revenue and Taxation Code; and Section 25299.42, Health and Safety Code. Reference: Section 50107, Revenue and Taxation Code; and Sections 25299.21, 25299.41 and 25299.43, Health and Safety Code.

2. Change Regulation 1212 (Liability for Fee) to read as follows:

### **Regulation 1212. Liability for Fee.**

- (a) The fee is imposed upon the owner of an underground storage tank for each gallon of petroleum placed into the tank. The owner of the tank is liable for payment of the fee regardless of whether the owner is the operator of the underground storage tank and is liable for the fee even if the owner and operator have entered into an agreement that requires the operator to pay the fee to the board.
- (b) The fee is due regardless of whether the fee has previously been paid for gallons of petroleum that were removed from an underground storage tank and placed into another underground storage tank or redeposited into the same tank in which they were previously stored.



(c) An owner is liable for the fee on all gallons placed in the underground storage tank(s) he or she owns. Where the owner requires a certain brand of fuel to be placed in a tank and the operator also places a different brand of fuel in the tank, the owner is liable for the fee on the gallons of both brands of fuel, even if placing fuel of a different brand in the tank violates the lease between the operator and owner.

(d) An owner is liable for the fee even though the owner claims he or she did not know the fee was due or was unable to obtain information from an operator as to the gallons placed into the underground storage tank(s). As provided by subdivision (c) of Section 50159 of the Revenue and Taxation Code, the board may provide to the ~~feepayer~~~~fee payer~~ otherwise confidential information obtained from the operator of an underground storage tank to the extent that this information is necessary for assessment, administration, and verification of the fee.

Note: Authority cited: Section 50142, Revenue and Taxation Code; and Section 25299.42, Health and Safety Code. Reference: Sections 50107, 50109 and 50159, Revenue and Taxation Code; and Sections 25299.41 and 25299.43, Health and Safety Code.

3. Change Regulation 1271 (Records) to read as follows:

**Regulation 1271. Records.**

(a) General. A ~~feepayer~~~~fee payer~~ shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

(b) Specific Applications. In addition to the record keeping requirements set forth in subdivision (a), owners of underground storage tanks shall comply with the following requirements.

An owner of underground storage tanks shall maintain complete records of all tanks owned and all purchases of petroleum products placed into underground storage tanks. Such records include but are not limited to:

- (1) Federal Income Tax Return Depreciation Schedules or fixed asset and improvement listing.
- (2) Property Tax Statements.
- (3) Underground storage tank installation records.
- (4) Lease agreements.
- (5) Petroleum products purchase invoices.
- (6) Copy of local agency permit and application for permit filed with the local agency.

Note: Authority cited: Section 50152, Revenue and Taxation Code. Reference: Sections 50109 and 50153, Revenue and Taxation Code.

## Introduction

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This house style guide has been developed by the Board of Equalization's (BOE) Editorial Services Section. As style changes over time, publication units, publishers, and newspapers generally decide to use one dictionary and one published style manual (in our case we use *Merriam Webster's Collegiate Dictionary* and *The Gregg Reference Manual*). In addition to the standard references, we have also developed this house style guide.

A team of editors, forms analysts, and Customer Service and Publishing Division managers developed this style guide to promote consistency in BOE forms and publications. This team discussed every item in this guide and agreed on how we should treat each individual entry.

If an example is not listed, please refer to *The Gregg Reference Manual, Eleventh Edition* for usage or *Merriam Webster's Collegiate Dictionary, Eleventh Edition*.

**E**

e.g., etc.	avoid; use for example, among others
enclosed (vs. attached)	to insert in the same envelope (see "attached")
ex tax	don't use; write out "without tax"

**F**

fax	lowercase
faxback	one word
federal	don't capitalize
feepayer	one word
fewer vs. less	use with things that are counted (fewer buckets, less water)
fine-tune	always hyphenated
firsthand	one word
fiscal year	lower case
follow-up (n., adj.)	<i>Example:</i> She was in charge of follow-up.(n) She did the follow-up work.(adj.)
follow up (v.)	<i>Example:</i> Please follow up with her as the deadline approaches.
form	avoid using before form identifier (BOE-770)
full-time	always hyphenated
fundraising	one word, no hyphen
FY (fiscal year)	capitalize when referring to fiscal year

**G**

Governor (the)	capitalize when referring specifically to the Governor of California
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**H**

handicap accessible	avoid; use wheelchair accessible
hard copy (n.)	<i>Example:</i> Please give it to Legal in hard copy.
hard-copy (adj.)	<i>Example:</i> Legal wants it in hard-copy format.
he/she; he or she; him/her; him or her	avoid both; use their or our
headquarters	a singular or plural noun
Headquarters	capitalized when referring to 450 N Street location
homepage	one word
Honorable	capitalized when used before name (the Honorable

Attachment

**2012 MINUTES OF THE STATE BOARD OF EQUALIZATION****Thursday, May 31 2012****CHIEF COUNSEL MATTERS****RULEMAKING****J1 Section 100 Changes to Specified Special Taxes and Fees Regulations**

Bradley Heller, Tax Counsel IV, Tax and Fee Programs Division, Legal Department, requested authorization to complete Rule 100 changes to amend specified Diesel Fuel Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, and Underground Storage Tank Maintenance Fee Law regulations (Exhibit 5.4).

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the section 100 changes as recommended by staff.

**J2 Section 100 Changes to Property Tax Rule 263, *Roll Corrections***

Bradley Heller, Tax Counsel IV, Tax and Fee Programs Division, Legal Department, requested authorization to complete Rule 100 changes to incorporate amendments made to Revenue and Taxation Code section 4831 by Senate Bill No. 947 (2011) (Exhibit 5.5).

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the section 100 changes as recommended by staff.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

MAY 31, 2012

CHIEF COUNSEL MATTERS

ITEM J1

SPECIFIED SPECIAL TAXES AND FEES REGULATIONS

Reported by: Juli Price Jackson

No. CSR 5214

P R E S E N T

For the Board  
of Equalization:

Jerome E. Horton  
Chairman

Michelle Steel  
Vice-Chairwoman

Betty T. Yee  
Member

George Runner  
Member

Marcy Jo Mandel  
Appearing for John  
Chiang, State  
Controller (per  
Government Code  
Section 7.9)

Joann Richmond  
Chief, Board  
Proceedings Division

For Staff:

Bradley Heller  
Tax Counsel IV  
Tax and Fee Division  
Legal Department

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450 N STREET  
SACRAMENTO, CALIFORNIA  
MAY 31, 2012

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MR. HORTON: Ms. Richmond, what is our next case?

MS. RICHMOND: Our next item is Chief Counsel Matters, J, Rulemaking, J1, Specified Special Taxes and Fees Regulations.

MR. HORTON: Members, Mr. Heller will introduce the issues -- as he comes.

MR. HELLER: Good afternoon, Chairman Horton, Members of the Board. I'm Bradley Heller from the Board's Legal Department.

I'm just here to request the Board's authorization to Complete Rule 100 changes to ten special tax and fee regulations. The changes update citations and make a few solely grammatical changes.

MR. HORTON: May I have a motion?

MS. STEEL: So moved.

MR. HORTON: Moved by Member Steel, second by Member Yee. Without objection, such will be the order.

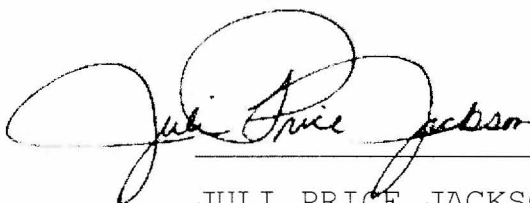
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## REPORTER'S CERTIFICATE

State of California       )  
  ) ss  
County of Sacramento    )

I, JULI PRICE JACKSON, Hearing Reporter for the California State Board of Equalization certify that on MAY 31, 2012 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 3 constitute a complete and accurate transcription of the shorthand writing.

Dated: June 7, 2012



JULI PRICE JACKSON

Hearing Reporter

